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Management Services Department.

EQUAL OPPORTUNITY
BACKGROUND REPORT

Contract Compliance

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EQUAL OPPORTUNITY
BACKGROUND REPORT

CONTRACT COMPLIANCE

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CITY OF TORONTO
MANAGEMENT SERVICES DEPARTMENT

A.L. Stevenson, Executive Director

City Hall, Toronto M5H 2N2

TO: Equal Opportunity Sub-Committee
Mayor's Committee on Community and Race Relations

FROM: Executive Director, Management Services Department

DATE: March 1, 1983

SUBJECT: Contract Compliance -- Background Study

The Equal Opportunity Sub-Committee of the Mayor's Committee on Community and Race Relations identified contract compliance as a strategy for reducing workplace discrimination. The Sub-Committee requested the Equal Opportunity Division to research and to prepare a background study on extending the existing contract guidelines used by the City.

A number of issues are raised by this study. To be specific, the implementation and on-going administration of policies which may derive from this study will be complex and cumbersome. Therefore, I have reservations about the application of this proposal.

In view of this, I would recommend that your Committee circulate copies of this study and invite responses from Civic Departments, Boards, Commissions, and other interested persons, as part of your deliberations on this subject.

The attached report is forwarded as requested.

A. L. Stevenson
Executive Director

EXECUTIVE SUMMARY

A BACKGROUND STUDY ON EXTENDING CONTRACT GUIDELINES FOR THE CORPORATION OF THE CITY OF TORONTO.

By Janice Dembo, Ceta Ramkhalawansingh, Sonja Greckol
Mary Bruce.

Toronto: Equal Opportunity Division
Management Services Department
City of Toronto. March, 1983.

The Equal Opportunity sub-committee of the Mayor's Committee on Community and Race Relations identified contract compliance as one of the strategies available to the Corporation of the City of Toronto for reducing employment discrimination. "Contract compliance" refers to a system whereby recipients of contract and other money from the City establish their commitment to equal opportunity.

The use of contract compliance for extending the City's human resource policies into the private sector is not new. In 1911 the Corporation of the City of Toronto introduced and has since strengthened its Fair Wage Policy which guides certain contractual agreements with the private sector. The City's Fair Wage Officer has advised that the City of Toronto is the only municipality in Canada to adopt, implement and monitor a Fair Wage Policy. Recipients of City contracts are required to pay their workers a fair wage (union rates). The policy in this study would be an extension of the present policy which would further curtail unfair and exploitative labour practices. The policy is congruent with the City's Equal Opportunity policies which apply to Civic employees. If implemented, it could provide the opportunity for underrepresented groups in the paid labour force (women, people with disabilities and minorities) to benefit from the Fair Wage Policy.

The City is financially involved with a range of institutions and organizations. It provides funding to a number of Boards and Commissions; it awards contracts for goods and services and places substantial investments with financial institutions. Each of these organizations has its own employees. The expansion of existing contract compliance policies to all these organizations could place the City in a unique position to influence labour market practices in Toronto.

It is estimated that the impact of extending the City's equal opportunity policies through a contract compliance program affects some $1.120 billion annually of City money invested or contracts awarded.

The study is presented in two parts. Part One outlines how employment discrimination operates to maintain a position of disadvantage in the labour market for women, minorities, and people with disabilities. Included is an analysis of the recruitment and selection procedures that are commonly used and the impact of these procedures upon the target groups. Also presented is a discussion of the status of target groups within the labour market developments of the 1980's.

Part Two discusses the framework for contract compliance as a corporate City policy. It is noted that regulation affects the allocation of resources, which in this instance refers to the availability of employment opportunities. Contract compliance as a corporate City policy is intended to influence and promote fair conditions of employment.

The key target areas that could be affected by a corporate contract compliance policy are the following.

PRIVATE SECTOR

1. The financial institutions with which the City invests short term surplus funds. In 1981, this amounted to $950,000,000.00.

2. The estimated $130,000,000.00 which is spent on the purchase of goods and services.

PUBLIC SECTOR AND COMMUNITY

3. Approximately $20 million is provided to City appointed Boards and Commissions.

   In 1981, these Boards and Commissions had 541 permanent employees whose salaries were directly supported by the property tax base.

4. The three municipal enterprises, Toronto Hydro-Electric System, Parking Authority of Toronto, and Toronto District Heating Corporation, generate income from services provided to the public.

   These three enterprises employ almost 1400 permanent employees and are managed by Boards or Commissions to which appointments are made by City Council.

5. Approximately $5 million is provided for general, cultural, and recreational grants.

6. The 1981 Statement of Expenditure for Cityhome totalled $15 million. Of this amount, $4 million was spent on the purchase of goods and services other than interest payments.

Recommendations could be made to Boards, Commissions and municipal enterprises regarding the implementation of equal opportunity and fair employment practices.

Similarly, the City's involvement with the private sector via the financial institutions and through its contractual agreements for the purchase of goods and services could be governed by the presence of fair employment and equal opportunity policies.

In addition, as a trustee for employee pension and other trust funds, the City could give consideration to managing these funds under an equal opportunity investment policy.

Three models of contract compliance are described.

. Model 1 requires the inclusion of an "Anti-Discrimination" clause in City contracts.

. Model 2 outlines 18 "good faith measures" which could be implemented as a demonstration of commitment to equal opportunity policies.

. Model 3 proposes the establishment of a point system approach for weighting the "good faith measures".

A preliminary discussion of implementation is also provided.

At the conceptual level the following are considered: weighting of factors, preparation of technical manuals, monitoring and imposition of penalties.

The administrative framework for implementation as it specifically applies to the City is outlined.

(1) The establishment of an implementation task force which would define and design an operational context. The Committees and Departments which might participate on this task force are identified.

(2) Additional resources will be required to assist in those areas requiring additional specialized and detailed investigation. These areas are identified in the study.

A detailed bibliography and appendices are included in the study.

"A BACKGROUND STUDY ON EXTENDING CONTRACT GUIDELINES FOR THE CORPORATION OF THE CITY OF TORONTO"

This study was prepared at the request of the
Mayor's Committee on Community and Race Relations
City of Toronto

Equal Opportunity Division
Management Services Department
City of Toronto
March, 1983

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The Authors
Toronto, 1983.

TABLE OF CONTENTS

		Page
BACKGROUND		1
INTRODUCTION		2
PART I: EXAMINATION OF THE PROBLEM		4
CHAPTER ONE:	LABOUR MARKET POSITION OF TARGET GROUPS	5
1 -i	Women	5
1 -ii	People with Disabilities	7
1 -iii	Minorities	8
1 -iv	Summary	9
CHAPTER TWO:	RECRUITMENT AND SELECTION PROCESS	11
2 -i	RECRUITMENT	11
2 -i(a)	Word of Mouth Recruiting	11
2 -i(b)	Walk In/Call In Method	11
2 -i(c)	Advertising	12
2 -i(d)	Old Lists of Applicants	12
2 -i(e)	Employment Agencies	12
2 -ii	SELECTION	14
2 -ii(a)	The Experience Requirement	14
2 -ii(b)	Application Forms	15
2 -ii(c)	Credentialism	15

		Page
2 -ii(d)	Employment Selection Tests	15
2 -ii(e)	The Interview	16
2 -ii(f)	Access to Training and Development	16
2 -ii(g)	Seniority Systems	17
CHAPTER THREE:	CANADIAN LABOUR MARKET DEVELOPMENT IN THE 1980's	19
3 -i	Canadian Labour Market Development in the 1980's	19
3 -ii	Equal Opportunity in the Private Sector	20
PART II:	CONTRACT COMPLIANCE AS A CORPORATE POLICY FOR THE CITY OF TORONTO	23
CHAPTER FOUR:	CONTRACT COMPLIANCE - A CORPORATE POLICY	24
4 -i	The Need for Contract Compliance	24
4 -ii	Contract Compliance Legislation As Social and Public Policy	25
4 -iii	The Impact of Contract Compliance as a Corporate City Policy	27

		Page
CHAPTER FIVE:	THREE MODELS OF CONTRACT COMPLIANCE	30
5 -i	Introduction	30
5 -ii	Model 1 - The Inclusion of an "Anti-discrimination" Clause In City Contracts	30
5 -iii	Model 2 - Contract Compliance with the Inclusion of "Good Faith Measures".	32
5 -iii(a)	Good Faith Measures	33
5 -iv	Model 3 - The Point System as an Approach to Contract Compliance	35
CHAPTER SIX:	IMPLEMENTATION	37
6 -	Implementation: Factors to be Considered	37
6 -i	Weighting of Factors and Assigning Points	37
6 -ii	Technical Manual and Dissemination of Information	38
6 -iii	Monitoring the Program	38
6 -iv	Penalties for Non-Compliance	39

		Page
SUMMARY		40
ADMINISTRATIVE/IMPLEMENTATION FRAMEWORK - City of Toronto		41
FOOTNOTES		45
BIBLIOGRAPHY		48
APPENDIX I	WORKERS' RIGHTS	55
APPENDIX II	CITY OF TORONTO RECOMMENDATIONS TO THE GOVERNMENT OF CANADA ON CONTRACT COMPLIANCE AND EMPLOYMENT PROGRAMS	59
APPENDIX III	FEDERAL AND PROVINCIAL HUMAN RIGHTS LEGISLATION	63

BACKGROUND

The Equal Opportunity sub-committee of the Mayor's Committee on Community and Race Relations identified contract compliance as one of the strategies available to the Corporation of the City of Toronto* for reducing employment discrimination.

In this report the term "contract compliance" refers to a system implemented by a funding institution, in this case the City, to require that employers receiving contract and other money from the City, establish their commitment to equal opportunity.

This report was prepared by a consultant to the Equal Opportunity Division in co-operation with the staff of the Equal Opportunity Division.

The report examines the impact of contract compliance as a corporate City policy and its congruence with existing equal opportunity and fair wage policies.

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*Throughout this report, the Corporation of the City of Toronto is referred to as the "City", meaning the Corporate City. The community at large is referred to as "Toronto" in order to distinguish it from the Corporate City.

INTRODUCTION

The use of contract compliance for extending the City's human resource policies into the private sector is not new. In 1911 the Corporation of the City of Toronto introduced and has since strengthened its Fair Wage Policy which guides certain contractual agreements with the private sector. The City's Fair Wage Officer has advised that the City of Toronto is the only municipality in Canada to adopt, implement and monitor a Fair Wage Policy. Recipients of City contracts are required to pay their workers a fair wage (union rates). The proposed policy is an extension of present policy which would further curtail unfair and exploitative labour practices. If implemented, the policy would be congruent with the City's Equal Opportunity policies and would provide the opportunity for underrepresented groups in the paid labour force (women, people with disabilities and minorities) to benefit from the Fair Wage Policy.

A policy on contract compliance is consistent with the City's recent response to the Government of Canada's Obstacles Report on the status of people with disabilities. (See Appendix II for selected recommendations approved on December 16, 1982.) Although the Obstacles Report was limited to people with disabilities and Native peoples, the direction of the recommendations and the City's response also apply to the other equal opportunity target groups designated by the City.

The existence of an Equal Opportunity Division at the City provides an example of a major employer attempting to meet its obligations to all sectors of the population. The Equal Opportunity Division, originally introduced for women, was expanded to include minorities and people with disabilities as these groups were also experiencing difficulties in finding employment, despite their availability to the work force. However, the City's Equal Opportunity policies apply only to Civic employees.

The City is financially involved with a range of institutions and organizations. It provides funding to a number of Boards and Commissions; it awards contracts for goods and services and places substantial investments with financial institutions. Each of these organizations has its own employees. The expansion of existing contract compliance policies to all these organizations would place the City in a unique position to influence labour market practices in Toronto.

It is estimated that the impact of extending the City's equal opportunity policies through a contract compliance program is in the order of $1.120 billion annually. Details of this are provided in Chapter Four of this study.

In order to consider expanding the existing contract compliance policy, i.e. Fair Wage Policy, it is necessary to understand how employment discrimination operates to maintain a position of disadvantage for women, people with disabilities and minorities in the labour market. Chapters One, Two and Three address these issues. This discussion is followed by Chapters Four, Five and Six which outline an expanded contract compliance policy for the City.

If a decision is taken to proceed with the implementation of an expanded contract compliance program in order to address the economic disadvantage faced by women, people with disabilities and minorities, it is necessary to point out that human rights legislation provides for the establishment of these policies. A decision by the City to proceed with implementation may be viewed as positive action to address the effects of systemic discrimination in recruitment and promotion throughout the employment system, and therefore may be considered to fall within the existing human rights legislative framework.

PART I

EXAMINATION OF THE PROBLEM

CHAPTER ONE: THE LABOUR MARKET POSITION OF TARGET GROUPS

Though the historical roots of the labour force disadvantage of women, the disabled and minorities differ, the effects of this disadvantage are similarly persistent. In the Canadian labour market, the skills of disadvantaged groups are underutilized. The paid work available to these people tends to be that which is undervalued, underpaid and concentrated in the least desirable and most vulnerable segments of the labour market where unemployment is high, working conditions are poor and there is little unionization. Increasingly, it is recognized that these concentrations are maintained by systemic barriers which masquerade as personal limitations of these workers.

In this section, the labour market position of the target groups will be outlined broadly. In the subsequent sections of this study, the systemic barriers which sustain their labour force position will be itemized with a view to developing methods for their removal.

1-i Women

- In 1980, 63.1% of the women employed in the Canadian paid labour market worked in clerical (34.6%), sales (10.4%), and service (18.1%) occupations. Only 10% did paid work in processing, construction, transportation, materials handling and crafts./1

- In 1980, 81.7% of the women employed in the Canadian labour market worked in tertiary industries, i.e. trade, finance, service, etc.

- In 1978, women represented 28.7% of all union members in Canada. 20% of paid female workers were unionized compared to 31% of male workers.

- In 1978, paid female workers earned 58% of the average salary of male workers. In clerical occupations, they earned 66.6% of male workers' salaries, in sales 44%, and in service occupations 48%.

- When 1979 unemployment rates were adjusted to take into account those workers who believed that no work was available to them, the female unemployment rate stood at 9.3% and the male rate at 7.0%.

. On January 31, 1982, 14,772 women were registered at Toronto District CEIC as unemployed clerical workers. On December 31, 1982, 27,511 women were reegistered as unemployed clerical workers./2

The Ontario Human Rights Commission in the year 1980-81 noted that complaints of employment discrimination on the basis of sex and marital status constituted 37% of the total number of cases registered.

Education is not necessarily the best insurance against low wages. Women workers in Canada are on the whole better educated than men workers. A 1971 breakdown of Ontario's labour force showed that 19% of the women compared to 27% of the men had achieved less than a grade 9 level of education. These figures tend to be duplicated across Canada. In addition, 10.1% of women and 4.6% of men have post-secondary non-university training, and 6.9% of women and 9.1% of men have completed university in Canada, according to 1972 figures./3. More recent data confirm a continuation of this trend since the 1971 Census was conducted./4.

"The evidence demonstrates fairly conclusively that levels of education and training are not significant in determining wage differences between men and women. Since occupations determine levels of earning to a greater degree than education, access to jobs and on-the-job training programmes are probably more important than education in reducing the wage gap between men and women."/5. Recent research on post-secondary graduates across Canada confirms this conclusion.

Thirty-nine percent of women in the work force are self-supporting because they are either single, widowed or divorced. Many of these women support children. Forty-four percent of those that do are living below the proverty line. The "number of two partner families living below the poverty line in Ontario would increase by 65% if the women in these families were not employed."/6.

It is evident that women, like men, do paid work for economic reasons. However, once employed, they find themselves underpaid and for the most part in a very limited range of occupations: the "job ghettoes".

1-ii People with Disabilities

. There are 200,000 people with disabilities in Toronto. In Canada there are 2,655,000 people with disabilities. Of this number, 2,165,000 are of working age and 50% of these persons are physically able to work, i.e. they are employable adults and constitute a group of potential workers. Of this group of employable people with disabilities, estimates of unemployment rates run between 50 and 70%./7.

. Employment for people with disabilities is primarily concentrated in low-skill, low wage jobs, although many are highly educated and skilled.

"The labour force position of disabled people is rooted in attitudinal, systemic and physical barriers hindering their full participation in the work place. Employers' reluctance to hire the disabled is, to a large extent, based on misconceptions and/or lack of awareness of their capabilities coupled with an unwillingness to incur the additional costs in hiring them."/8. In recent years, government assistance has become available for those employers willing to employ people with disabilities. This assistance is provided to help employers meet any extra costs of accommodating workers with disabilities. Despite such incentives, few employers have taken advantage of them.

Medical and technological advances are allowing more people with disabilities to function independently and effectively in the labour force. Many people with disabilities are acquiring the educational and occupational skills necessary to participate in the work force.

1-iii Minorities

On August 10, 1981, the City of Toronto adopted an Equal Opportunity: Employment Utilization Study which considered the employment difficulties faced by minority groups. Aside from documenting the level of representation of visible minority group members at City Hall, the study provided background information on the employment discrimination faced by minority group members, as well as general demographic information about the population.

The major employment difficulties cited by members of minority groups included the following:

- requirement for Canadian experience;
- refusal to recognize non-Canadian qualifications;
- refusal to recognize non-Canadian work experience;
- underemployment of highly trained individuals.

The City's Employment Utilization Study cited the following facts:

- The dominant cultural group in Metropolitan Toronto is Anglo-Saxon (49.6%);
- The visible minority population is estimated to be between 12% and 20% of the City's population;
- In recent years, close to forty percent of all immigrants to Canada settled in the Metropolitan Toronto area;
- Over 50 languages are spoken by residents of the City of Toronto as their first language;
- The most recent groups of immigrants to Toronto include people who can be classified as belonging to a visible minority group. (Earlier emigration to Canada had been from Great Britain, Northern and Central Europe. After World War II Southern Europe provided the next largest source of immigrants.)

Recent studies on discrimination have also provided us with the following information:

- The 1976 Every Student Survey of Toronto schools found that regardless of where students were born, those with English as a Second Language were more

likely to have parents in a lower occupational category than children who came from homes where English was the first language;

- The 1978 Ethnic Pluralism Study cited discrimination at these levels: West Indians - 72%; Chinese - 24%; Italians - 22%, Jewish -- 17%; Portuguese - 17%;

- During 1980-81, 84% of complaints before the Ontario Human Rights Commission cited discrimination in employment. Of these 40% were based on race or ethnic background;

- The 1980-81 Annual Report of the Ontario Human Rights Commission noted that racial discrimination has always been the single largest complaint category;

- The 1982 Social Planning Council Report noted that West Indian men earned at least $2,400 less annually than the average Metro resident. For minority group women, the averages were much less than for minority group men;

- Unemployment is more than twice as high for those of South Asian (Indo-Pakistani) background than for the average Metro resident;

- A recent study of inner City schools in Toronto found that ethnic minority families were poorer than previously realized./9.

1-iv Summary

Disadvantage in the labour market is often created and maintained by certain practices and policies. These practices and policies can be identified by asking the following questions, which are listed in the Affirmative Action Manual produced by Canada Employment and Immigration Commission./10.

Legality.	Does the practice or policy conform to existing human rights regulations?
Consistency.	Is the policy or practice applied in an equitable manner?
Adverse Impact.	Is there a disproportionate impact on a target group?

Validity. Is the practice objective and does it accomplish its predictive or evaluative function?

Job Relatedness. Is the practice based on bona fide occupational requirements?

Business Necessity. Is the practice necessary for safe or efficient business operations?

Harrish Jain notes that "barriers to entry into the internal labour market include screening devices, credentialism, employment tests and interviews, narrow channels of recruitment, misconceptions and job stereotypes, employee organizations and trade union policies."/11 Making it to the selection process has been identified as one of the major employment problems women, people with disabilities and minorities face. Many recruitment methods chosen by organizations are not accessible to most women, people with disabilities or to minorities.

As the labour market growth slows and unemployment worsens, those groups who have been denied equal employment opportunities are most seriously affected. Recent studies indicate that most people with disabilities are unemployed. All existing research indicates that unemployment among visible minorities, particularly those who are young and female, is disproportionately high. The problem then becomes one of creating broader access while still having to protect the hard won gains of these groups. Though the effects of disadvantage are similar, creating equal opportunity for these groups in the labour market requires different practical activities.

CHAPTER TWO: RECRUITMENT AND SELECTION PROCESS

The extent of the labour force disadvantage of the target groups has been characterized in the preceding Chapter. In this Chapter, recruitment and selection practices that sustain this disadvantaged position are outlined.

2-i RECRUITMENT

A recent Social Planning Council report identified five recruitment techniques commonly used in Toronto./12 Like other studies, it noted that inherent in all of these techniques is a potential for discriminatory impact. Although the discrimination may be unintentional, these recruitment techniques may exclude suitably qualified candidates if they are not used cautiously or knowledgeably. The five recruiting techniques are (a) word-of-mouth recruiting, (b) walk-in or call-in method, (c) advertising, (d) old lists of applicants, and (e) employment agencies.

2-i(a) Word-of-Mouth Recruiting

Many studies in Toronto have found that the majority of employers rely heavily upon informal networks to recruit and select new employees from their local labour market.

Peter Robertson, the former Director of Programme Planning and State and Community Affairs in the United States notes, "The predictable statistical impact of a word-of-mouth recruitment system among an existing white or male workforce would be that it would perpetrate the segregated nature of the workforce and result primarily in the recruitment of additional whites or males."/13

A word-of-mouth recruitment system operates to the disadvantage of women, people with disabilities and minorities as it tends to replicate an organization's existing workforce.

2-i(b) Walk In/Call In Method

The walk in/call in method of recruitment refers to the practice of receiving inquiries for jobs from people over the telephone or across a counter. "This method can have an extremely discriminatory impact. Applicants using this method are often rejected arbitrarily by 'gate keepers' such as switchboard operators and receptionists, many of whom have not been trained to apply objective criteria to determine employment eligibility. Such

cases are regularly brought before the Ontario Human Rights Commission....abuse through such a system of recruitment can never be effectively stopped until an alternative system of dealing with all inquiries and applications is established."/14

This method of recruitment is dependent on the location of the organization and its accessibility to the target groups. The disadvantages of this method are similar to word-of-mouth recruiting. The most obvious is that the organization does not actively invite applications and therefore is likely to perpetuate its existing work force.

2-i(c) Advertising

Employers can choose from a wide variety of media when they advertise for prospective employees. These include major daily newspapers, professional and trade journals, community newspapers and radio advertisements. Advertising can become discriminatory if the media chosen is inaccessible to the target groups, i.e. it has a limited audience. The advertisement can deliberately or unintentionally convey preferences as to age, sex, group membership and physical ability. Similarly persons who do not read the English press are at a particular disadvantage.

2-i(d) Old Lists of Applicants

Many employers maintain records of all suitable persons who have applied for jobs over the years. When a position becomes vacant, they usually attempt to recruit the new staff person from the top of that list of suitable candidates. As women have only recently been considered for non-traditional jobs, people with disabilities for gainful employment, members of these groups find themselves at the bottom of these lists. Another factor that is often ignored is that the lists may have been previously screened to systematically exclude certain ethnic groups, women and people with disabilities.

2-i(e) Employment Agencies

Employers often use the services of employment agencies to help recruit suitable staff. Because the private agencies are in the business of promoting "marketable" clients, they often tend to exclude target group members. In addition, many employers have been found to use such agencies to screen out certain racial and ethnic groups.

In 1975, the Canadian Civil Liberties Association conducted a study and confirmed that 11 out of 15 agencies in Toronto, were willing to accept discriminatory job orders and only refer applicants from the majority group./15 "Curtailing this kind of discrimination, however, is extremely difficult since the people discriminated against have little or no knowledge of the job for which they are applying, and therefore do not know if they are actually qualified for the job or if they are being refused because of their race or ethnicity."/16

It is conceivable, despite the illegal nature of this procedure, that employment agencies may still accept such discriminatory work orders. While discrimination in this procedure has been demonstrated for racial and ethnic groups, it is not clear to what extent agencies have also been excluding women and workers with disabilities.

Summary

All the foregoing methods of recruitment can lead to the underemployment of target groups. When questionned about this underrepresentation, employers who use these recruitment methods usually state that minority group members, women and people with disabilities do not apply.

2-ii SELECTION PROCEDURES

Selection standards and procedures may also screen out qualified members of the target groups. "The selection process is open to discrimination of two basic types. The process itself involves continual comparisons of applicants against each other and evaluation against the selection standards. Each time candidates are evaluated or compared, there is potential for discriminatory impact.

In many instances, selection standards themselves are not based on job-relatedness or tested for disparate impact and validity."/17

2-ii(a) The Experience Requirement

This requirement when applied rigidly can have a discriminatory effect and screen out immigrants who have not worked in Canada, but who have the requisite qualifications and experience in their country of origin. Although the employment guidelines provided by the Ontario Human Rights Code are intended to prevent this "many employers see this as a legitimate way of assessing job skills"./18. The Civil Liberties Association has noted that the use of this criterion by some employers is a way of barring recent immigrants from job opportunities.

"It would be more appropriate to ask for the relevant information directly. This would mean asking for knowledge of the local area if that is required, or familiarity with a certain process of work or machine that is commonly used in Canada rather than assuming foreign experience is entirely irrelevant"./19

Many women who have undergone training in the non-traditional trades and professions lack experience in the workplace. Women who are re-entering the paid labour force after a period of work in the home and/or community find their skills and experiences either ignored or discredited. Likewise many people with disabilities who are adequately qualified for many occupations are excluded on the basis of lacking experience. Although previous experience is used in the screening process as a means to predict job success, there is little evidence to show that it provides an accurate prediction of a worker's potential.

2-ii(b) Application Forms

Although it is illegal under the human rights legislation to require from applicants certain information which could be used in a discriminatory way, the application form still may be a way of screening out some individuals.

The skills required to fill out an application form are frequently unrelated to job skills or requirements. It is obvious that in positions not requiring knowledge of English nor neatly prepared paperwork, the application form as an instrument to judge a person's capabilities can become yet another discriminatory tool.

2-ii(c) Credentialism

Educational requirements may also be used to screen out members of minority groups and women. Although the educational requirement may be unrelated to job performance, many employers according to Jain, may use these requirements as a screening device to reduce the number of applicants./20 The use of credentials in this manner becomes a barrier for persons with less than the required level of education or without Canadian qualifications. Many employers maintain that it is difficult to evaluate foreign educational qualifications and, therefore, reject these applicants.

> "There is a need for employers to have more information about foreign qualifications. But it is also encumbent upon employers to critically review their screening qualifications on foreign experience to see if they are really justified."/21

In times of high unemployment when there are many applicants, it is easy for employers to arbitrarily set high educational requirements to screen out applicants. "Requirements for a minimum level of education such as grade 13 in Ontario will adversely affect certain minority groups. People of Italian, Portuguese, and West Indian backgrounds in Metropolitan Toronto have average levels of education that are lower than majority Canadians and other groups"./22

2-ii(d) Employment Selection Tests

There is no requirement in Canada for employers to use validated tests which have been standardized and tested for cultural bias and job performance predictability. Many employers utilize selection tests (to measure I.Q., personality or predict job performance) to screen out

applicants. A recent task force study in Ontario indicated that "psychological tests, and in particular intelligence tests, are not entirely free from cultural bias, and that individuals from ethnic, cultural and language backgrounds that are different from individuals from the dominant culture on whom the psychological tests were standardized and validated tend to do poorly on some of these tests. This does not mean that they are inferior to other groups who do better on these tests."/23

Often tests are not job related and are merely used as a device to screen out applicants. The Social Planning Council noted that the use of such tests is another major way in which systemic discrimination operates by providing a way in which a seemingly neutral practice operates to exclude minorities./24. If particular selection tests that are not skill based produce differential qualifying rates for different target groups, then an argument can be made that the measurements are biased. For example, if a particular test qualifies only 40% of minority applicants while qualifying 90% of the non-minority applicants, this test should be eliminated. Tests, for example, which require physical ability or dexterity to complete, may also screen out qualified applicants with disabilities.

2-ii(e) The Interview

"Employment interviews are the most widely used method of selecting employees despite research indicating that they have limited reliability and validity because of their highly subjective nature. The interview process is vulnerable to the personal biases, prejudices, and stereotypes of the interviewer. Interviewers may, therefore, form unfair evaluations of minority group members even when the candidates are substantially similar to non-minority applicants with regard to their job qualifications."/25

Research has also shown that women are generally given lower evaluations than male applicants who have the identical qualifications. Some research indicates that interviewers give lower evaluations to females being considered for jobs traditionally held by men and significantly more females than males are recommended for jobs traditionally held by women./26

2-ii(f) Access to Training and Development

Systemic discrimination is not limited to the recruitment process. An organization's training and development

policies also determine access to opportunities within the organization. Access is frequently based on factors such as seniority, salary, status and/or occupation. Although these criteria appear to be neutral, they frequently can have a differential impact on the training and development opportunities for the target groups.

2-ii(g) Seniority Systems

From an equal opportunity perspective, there is a need for strong union protection in the current labour market. However, restriction on external recruitment based on collective agreements may present a real barrier to improving the participation rate of women, minorities and people with disabilities.

Labour market experts have noted that seniority systems were established to eliminate discrimination and abuse in hiring and promotion procedures. It has been found that seniority systems create disadvantage for equal opportunity target groups by perpetuating employment patterns. Harrish Jain has argued that, "Minority group workers and women (and people with disabilities) may be denied promotion by restrictive promotion criteria, by limitations upon posting and bidding arrangements for internal recruitment, by restricting both minorities and women to lower paying job classifications and by discriminatory seniority systems."/27

"If women and the minorities or (people with disabilities) were the last hired they will be the first fired."/28

Jain discusses the role that craft unions in the construction industry in particular play in recruitment and selection decisions. "The effect of restrictions such as high levels of education and training will be to limit opportunities for minority workers since they may, on average, possess lower educational qualifications than the rest of the population. Furthermore, existing employees in such occupations will resist any attempts to remove such indirect discrimination which reduces competition for their jobs and hence enables them to maintain artifically high wages"./29

With respect to women this pattern was also identified in the Affirmative Action manual produced by the Canadian Union of Public Employees in 1975. In the foreword, the manual noted the following, "Traditionally, unions have used the collective bargaining process as the main instrument for improving the status of women at the work place. Unfortunately, the rights of women at the work

place never really became a major collective bargaining priority. Consequently, many injustices were not corrected and continued on for many years./30 The manual continues, "It is only a recent development that trade union activists began to realize that working women are not given an equal opportunity at the work place ....It became evident that the matter of women's rights should not be allowed to fade into the background, or allow the issue to slip to a low collective bargaining priority once again."/31

Although the barriers to employment that are described and the sentiments expressed referred to women, they also apply to minorities and people with disabilities.

It is evident, therefore, that the responsibilities for eliminating employment discrimination faced by women, minorities and people with disabilities are jointly held by both unions and management.

CHAPTER THREE: CANADIAN LABOUR MARKET DEVELOPMENT IN THE 1980'S

3-i Canadian Labour Market Developments in the 1980's

The economic uncertainties facing western industrial economies, the pace of technological change, and the unavailability of reliable long range human resources planning data in most employment sectors are among the factors that contribute to the difficulties in projecting labour market changes. The assumptions underlying the currently employed predictor models may bear little relation to the currently shifting market and have come under serious attack from various quarters.

Some research studies anticipate serious shortages of labour particularly in the high growth industries. These predictions, however, appear to be at odds with the increased capitalization of production and attendant reduction of available jobs.

One characterization of the labour market of the 80's is provided by a recent Task Force on Labour Market Development, which was established by the Federal Employment and Immigration Commission.

> "Serious shortages of labour supply are anticipated, particularly in high-growth regions of Canada and in high-growth industries. Significant shifts will occur in occupational demand, pointing to a potentially serious imbalance between the skills needed by employers and the skills available in the labour market.
>
> The rapid pace of technological change will contribute greatly to these shifts.
>
> The labour force will be growing more slowly and changing significantly in composition. A decline in the number of youth and immigrant workers will mean fewer of the workers will be able to adjust to regional and occupational shifts in demand."/32

The Task Force research studies suggest a need to retrain existing workers in order to meet labour market shortages in the goods producing industries. This suggestion bodes

well in so far as there is a suggestion of future employment.

A 1982 study from the Economic Council of Canada discussed the issue of availability of necessary skills. In this study, the researchers noted that shortages were defined according to the "perception" of shortages by employer organizations. While these critical shortages relate to high-level blue collar skills, in other sectors hiring difficulties were not "the result of inadequate supplies of required skills."/33

Similarly, labour force projections to the year 2051 indicate that "a larger proportion of the population would be dependent on non-wage income and that a smaller proportion would be in the labour force."/34

Recent data on the labour force present the following picture:

- Since 1975, one out of every four jobs created in Canada has been filled by women performing part-time work in the trade and service industries;/35
- Over half the jobs created in Canada between 1975 and 1980 were in the trade and service industrial sectors;/36
- Manufacturing accounts for an ever decreasing proportion of Canada's GNP./37

These observations suggest the possibility for the public sector to take steps which would provide employment to those groups which have experienced barriers to employment. Therefore, the role of the public sector becomes even more crucial in allocating those few resources that exist. Increasingly, equity will become one of the major issues in access to employment within the public sector. Aside from the introduction of equal access policies to public sector organizations, there also exist requirements which public sector institutions can place upon all its contracts and agreements in order to increase equal access and equal opportunity policies.

3-ii Equal Opportunity in the Private Sector

In early 1982, the Ontario Minister of Labour, Russell Ramsay, made the following remarks at a conference on affirmative action: "My message to employers is that they have the opportunity to undertake (voluntary) affirmative action because it is a rational business practice rather than a government requirement"./38

The introduction of equal opportunity policies, including affirmative action practices, for both the public sector and the private sector organizations with which they are involved will ensure that all groups are included in the labour pool from which hiring is done. In particular, those groups which have experienced employment barriers, e.g. women, people with disabilities and minorities, will be included among lists of people considered for employment.

This point has been noted by personnel adminstrators in the United States where contract compliance has been legislated. Don Liebers, Director - Equal Opportunity, Affirmative Action and Human Resource Planning for A.T. & T., notes that contract compliance "can give the hiring and promotion process increased objectivity"./39. This opinion is echoed by Ruth Gilbert Scheffer, an economist with the US Conference Board. Scheffer maintains that US companies "have acknowledged that contract compliance has assisted them in learning to manage their human resource systems. Some are admitting that it makes good business sense. Companies are discovering that their job standards are often substantially inflated. Many underemployed but highly qualified employees are being given an opportunity to take on jobs previously barred to them. Employee morale, absenteeism, and turnover have all been positively affected."/40.

Scheffer also believes that "the contract compliance program has had a tremendous impact on the whole employee/managerial relationship. All employees, not just women and minorities, have gained as a result of the structural changes in personnel policy .... The systemic changes have opened up more jobs to all employees, especially those jobs that had rigid criteria"./41.

Peter Robertson's analysis of affirmative action in Canada concluded that government would eventually define as discriminatory those practices which have an adverse impact upon target groups. Robertson also suggests that "those employers who are concerned as a matter of principle, that their practices be in compliance with the law will want to begin a voluntary program of self-examination and self-remedy."/42. He comes to the conclusion that if the Canadian experience follows the American model, then companies which do not examine their policies may find themselves at substantial financial risk if they run afoul of the law. In other words, by not gradually introducing voluntary affirmative action, they may be fined and have mandatory affirmative action imposed upon them.

The primary reason for considering contract compliance stems from the limitations of voluntary programs in both the public and private sectors in Canada.

The Federal government's affirmative action program in the private sector has not had a major impact. The Globe and Mail noted in April, 1982 that since 1976 when the program began, of the 750 companies the government has approached to undertake affirmative action programs, 27 have agreed. None of those companies has managed to put a program into place. Having convinced 175 major Ontario companies to initiate affirmative action in an eight-year period, the Ontario government has been slightly more successful.

Stephen Lewis, former leader of the Ontario NDP has criticized "permissive" equal opportunity and affirmative action programs. At a speech given at City Hall in May, 1982, Lewis noted that such programs maintain disproportionate relationships. Lewis also calculated that at the present pace of change there would not be proportionate employment representation for women, people with disabilities and minorities, for another 13,000 years. In the spring of 1982, July Erola, the Federal Minister of Mines and the Status of Women, and Charles Caccia, Federal Minister of Labour, both concluded that mandatory measures may be necessary to ensure that employers will institute equal opportunity programs.

There is no doubt that the City's efforts at equal opportunity and contract compliance would be made easier if both federal and provincial levels of government were to pass mandatory equal opportunity legislation.

In the absence of such legislation, organizations such as the City, which are concerned with distributive justice and equity, have little choice but to adopt their own measures. One such measure is contract compliance, which is the subject of the rest of this study.

PART TWO

CONTRACT COMPLIANCE AS A CORPORATE POLICY FOR THE CITY OF TORONTO

CHAPTER FOUR: CONTRACT COMPLIANCE - A CORPORATE CITY POLICY

4-i The Need for Contract Compliance

At a recent conference of Federal and Provincial Ministers responsible for the status of women, Premier Hatfield of New Brunswick concluded that urgent action was needed to ease the problems affecting women or "their sense of outrage would turn to rage". Hatfield pointed to the real dangers of women becoming alienated from government and, "in its mild form that rage would be used to vote out of office those governments which continue to downplay the concerns of women."/43

Similar dangers exist for local governments if they ignore the employment difficulties experienced by women, people with disabilities and minorities. Recent studies and newspaper articles have suggested that the failure to respond to the employment concerns of disadvantaged groups may lead to social conflict along the lines of those experienced in Britain.

Most recently the Race Relations division of the Ontario Human Rights Commission has also drawn attention to its concern about the excessively high unemployment among minority youth. The Commission is of the opinion that such problems must be confronted now before the situation deteriorates further and poses serious problems for future race relations. In its 1982 strategy paper on Race Relations, the Commission observes,

> "Immigrants generally, and visible minority immigrants in particular, who came to Canada in the 1960's have, to some extent, tolerated discrimination. However, the Canadian-born children of these immigrants, who will enter the labour market in the next four to five years in large numbers, will surely consider themselves full members of Canadian society, and will expect to be treated with fairness and equity. This, after all, is in keeping with the image Canadian society projects, and Canadian society is the only one these children know.
>
> We worry about unfair treatment of this, and any new generation of Canadians

> because, as the British and American experience has shown us, they will not react, adjust and generally relate to society in the same manner as their parents for the simple reason that they are not 'newcomers' or 'visitors'. They are native born. They will demand equal treatment and will be unwilling to be grateful for merely being in Canada."/44.

The Commission concludes that the transition period immediately ahead will require consistently responsive initiatives and public policies to dismantle the complex problem of racial and economic disadvantage.

A similar concern was also noted in the August 1981 Equal Opportunity: Employment Utilization Study, which was adopted by Toronto City Council. As recently as March, 1982, an Editorial in The Toronto Star called upon employers to break down barriers that exclude minorities from jobs.

It would seem that the City of Toronto is faced once again with providing leadership. As a local government, the City is responsible for supplying many services to its residents. Many of these services are dependent upon outside contractors. The City is therefore able to have an impact upon the employment status of disadvantaged groups.

Leah Cohen observed that "the general political consensus is that contract compliance is a mechanism to ensure the equitable workings of the free market system. In fact, the goals to eliminate systemic discrimination by government intervention is believed to be part of the public conciousness."/45.

In view of the present unfavourable labour market conditions, the City could introduce equal opportunity policies and practices to govern the City's relations with the private sector. The introduction of these policies by way of contract compliance could be beneficial to both the City and the private sector.

4-ii Contract Compliance Legislation as Social and Public Policy

The debate on government regulation and involvement in the market is extensive. However, it has been noted that "regulation is not (nor was it intended to be) a neutral exercise of government power. Regulation affects the allocation of resources, the quality of output produced

in the economy, consumer prices and factor returns. Each of these affects the real disposable income of individuals and groups."/46. While most of the debate surrounding regulation has not been addressed to employment issues, there are basic arguments that still apply. In this instance the allocation of resources refers to the employment opportunities which are available to disadvantaged groups.

This involvement of government does not necessarily diminish the role of the market. Such has been noted by one of the foremost exponents of the free enterprise system, Milton Friedman:

> "The existence of a free market does not, of course, eliminate the need of government. On the contrary, government is essential both as a forum for determining the 'rules of the game' and as an umpire to interpret and enforce the rules decided on."/47.

For many years now, the Government of Canada has stated as policy that government spending power should be supportive of national policies. Congruent with this view, it has endeavoured to use federal contracts as an instrument with which to address the effects of discrimination felt by certain target groups. (See Appendix II).

Other areas of regulation have been identified by the Economic Council of Canada. The Council identified five types of economic regulation (price, rate of return, entry, exit, output) and four types of social regulation (health and safety, environmental, fairness, cultural). With respect to social regulation, in particular, fairness, the intent identified by the Economic Council of Canada is the influence on the conditions of sale and employment./48 (emphasis ours). Contract compliance as a corporate City policy would be similar in its intent to influence and promote fair conditions of employment.

Although there are some who would argue that economic efficiency is at stake, there are others who have also argued that "... in the political quasi-market, the regulatory process probably is efficient, given the multiplicity of demands placed on it. What is more, the aims and effects of regulation cannot be analysed economically without some reference to their context." /49.

This would also be true with respect to the introduction of contract compliance as a corporate City policy. In this circumstance, it could be argued that the context is the disadvantage and employment status of women, people with disabilities and minorities. The Canadian Human Rights Act, Section (a) states that "every individual should have equal opportunity to make for himself or herself the life that he or she is able and wishes to have consistent with his or her duties and obligations as a member of society without being hindered in or prevented from doing so by discriminatory practices".

This report has focussed upon the employment discrimination which large numbers of persons in Toronto face. Contract compliance is a positive undertaking that the City could take to address the effects of systemic discrimination in the employment market. The goal of such an undertaking would be to address those systems which operate to exclude the disadvantaged target group members from making their contribution to the social and economic development of Toronto. Such a program would enhance the opportunities of those Canadians presently excluded from the real opportunities of the market place.

4-iii The Impact of Contract Compliance as a Corporate City Policy

It is estimated that the impact of extending the City's equal opportunity policies and practices through a contract compliance program is in the order of $1.120 billion.

This estimate is derived from data provided by City officials in the following Departments - Audit, Finance, Management Services and Purchasing and Supply. Aside from the purchase of goods and services, including the investment of short term surplus funds, the City is involved in a range of activities which are deemed to be in the municipal interests. Some of these activities include the operation of community centres, arenas, libraries, the provision of parking services, sewer maintenance, etc. All of these types of activities require either the expenditure of funds or the management of funds for the delivery of services.

With respect to a corporate contract compliance policy, the following are key target areas.

PRIVATE SECTOR

1. The financial institutions with which the City invests short term surplus funds. In 1981, this amounted to $950,000,000.00.

2. The estimated $130,000,000.00 which is spent on the purchase of goods and servicer.

PUBLIC SECTOR AND COMMUNITY

3. Approximately $20 million is provided to City appointed Boards and Commissions.

   In 1981, these Boards and Commissions had 541 permanent employees whose salaries were directly supported by the property tax base.

4. The three municipal enterprises, Toronto Hydro-Electric System, Parking Authority of Toronto, and Toronto District Heating Corporation, generate income from services provided to the public.

   These three enterprises employ almost 1400 permanent employees and are managed by Boards or Commissions to which appointments are made by City Council.

5. Approximately $5 million is provided for general, cultural, and recreational grants.

6. The 1981 Statement of Expenditure for Cityhome totalled $15 million. Of this amount, $4 million was spent on the purchase of goods and services other than interest payments.

If the City so chooses, recommendations could be made to its Boards, Commissions and municipal enterprises regarding the implementation of equal opportunity and fair employment practices.

Similarly, the City's involvement with the private sector via the financial institutions and through its contractual agreements for the purchase of goods and services could be governed by the presence of fair employment and equal opportunity policies.

In addition, as a trustee for employee pension and other trust funds, the City could give consideration to managing these funds under an equal opportunity investment policy.

Chapter Five presents three models for contract compliance which could be used to extend the City's corporate equal opportunity policies to Toronto.

CHAPTER FIVE: THREE MODELS OF CONTRACT COMPLIANCE

5-i Introduction

The foregoing section outlined the extent of the City's economic ability to effect equal opportunity policies within the community at large.

Each of the areas in which the City allocates funds or over which the City has jurisdiction would require the establishment of specific compliance programs. The proposed models of contract compliance apply primarily to the purchase of goods and services. However, many aspects of these models are also applicable to other areas, particularly Boards, Commissions, and financial institutions where surplus funds are invested.

These three models are:

Model 1: The Inclusion of an "Anti-Discrimination" clause in City Contracts.

Model 2: Contract compliance with the inclusion of "Good Faith Measures".

Model 3: The Point System as an approach to contract compliance.

These three models are described in the rest of this chapter.

5-ii Model 1: The Inclusion of an "Anti-Discrimination" Clause in City Contracts

The most rudimentary form of contract compliance is the inclusion of a clause in all contracts whereby the contractor agrees not to discriminate against women, people with disabilities and minority group members. However the mere inclusion of an anti-discriminatory clause in a contract is redundant given the specific anti-discrimination provisions of federal and provincial human rights legislation. This approach does little to change the systems which operate to exclude women, people with disabilities and minorities.

The federal government has already recognized that "if one uses the contracting power merely to include an anti-discrimination clause in the contract, and if the notion of discrimination implied is the traditional one which proscribes overt acts of discrimination based on ill-will

or prejudicial attitudes regarding race, sex, marital status or physical disability, then little will be changed."/50

In addition, the only way the City could enforce such a clause would be through the civil courts. Thus in the case of a breach of contract, the jurisdictional dimensions of this approach would pose many difficulties.

Models Two and Three of contract compliance are based on the recognition that employment discrimination as it affects the three target groups is the result of a series of related practices. Therefore, the solution to this problem must address this range of practices. The practices, though they confine the employment of various groups, rarely constitute overt discrimination.

As well, it is recognized that the contracts tendered by the City are varied and so too are the companies. Although it is difficult therefore, to impose a rigid set of requirements on all contractors, it is necessary to focus on changing employment practices. Contract compliance is an effective tool for doing this.

A contract compliance program would require positive action undertaken in relation to the employment of women, minorities, and people with disabilities. The program could be implemented through an amendment to the City's existing contract compliance program -- The Fair Wage Policy.

The City has a large number of contracts for goods and services with the private sector. The contracts for services, including financial services, are small and large dollar in value over a long or short term. The contracts for goods are small and large dollar in value.

Given these six types of contracts, the City could have the most effect on the recruitment and employment policies of those companies with which it has continuing business, as the dollar amounts involved are sufficient incentive to encourage the companies to introduce equal opportunity programs.

It would not seem feasible for the City to impose a comprehensive equal opportunity program on a company with a very small work force, e.g. a family-owned and operated trucker hauling a load for the City.

However, if the City only concentrated on those companies with which it does the most business, the number of persons affected from the target groups would be very

small. It therefore would be desirable that the City adopt several approaches to Contract Compliance in order that the numbers of persons affected be greater and the success of the contract compliance program be ensured.

5-iii Model 2: Contract Compliance with the inclusion of "Good Faith Measures"

As a condition of obtaining a City of Toronto contract, private sector employers would undertake certain good faith measures to broaden the participation rates of women, people with disabilities and minorities in their business operations.

For the purposes of this report, good faith measures will be defined as conditions which contractors undertake in their business operations in order to broaden the participation of the target groups. These efforts will be viewed as practical applications of the contractors' commitment to implement equal opportunity programs within their business operations.

However, it must be understood at the outset, that although contract compliance has a positive potential for correcting the inequalities that could be operative in the employment systems of the contractors, real progress can only be made under a contract compliance program if there is a positive undertaking to advance the recruitment and promotion of the target groups.

Good faith measures according to the Canadian Civil Liberties Association should have a twofold purpose:

1. More disadvantaged people should be encouraged and assisted to qualify and compete;

2. Employers under government contract should be required to broaden the traditional sources of recruitment and promotion.

The following are a suggested list of 18 Good Faith Measures which could be incorporated into City Contracts. It will be seen that many of the measures could be introduced into all contracts to ensure that the contract compliance program succeeds.

5-iii(a) GOOD FAITH MEASURES

The existing Worker's Rights could be amended to include Good Faith Measures and all contractors would continue to be required to display legible copies of these Worker's Rights in prominent and accessible positions in the workplace.

Non-Discrimination

1. Contractors shall not discriminate against any employee or applicant for employment because of race, creed, colour, religion, sex, marital status, occupation of spouse, age, disability or sexual orientation.

Expanded Recruitment

2. Contractors shall expand the pool of potential applicants by advertising in the community and commercial media, work place and employment centres. All advertisements for employment placed on behalf of the contractor for a City Contract shall state that all qualified applicants shall receive consideration for employment without regard to race, colour, religion, sex, national origin, marital status, occupation of spouse, age, disability or sexual orientation.

Job-Related Criteria

3. In compliance with human rights legislation and City policies, contractors shall eliminate from the application process all questions of religion, marital status, national origin, sex, occupation of spouse, age, disability or sexual orientation. This is necessary in order to eliminate the use of information which is not job related in deciding whether the applicant is qualified.

4. The job description, recruitment, selection screening and employee evaluations shall reflect valid job staffing standards. This requires the elimination of 'bona fide' occupational qualifications which are not job related. (For example, height and weight restrictions, etc., which may serve to exclude women and minorities).

5. All contractors who utilize tests as a means of selecting employees, shall use alternative means of selection for candidates who are at a disadvantage with respect to language, education, disability or

culture. (For example, providing more time for disabled candidates, restricting the use of written tests for applicants whose first language is neither English nor French).

6. All companies shall pursue a policy whereby they validate all employee selection requirements and specifications in order to eliminate bias.

Compensatory Hiring

7. When a company is unable to meet equal opportunity contract conditions in hiring employees from the target groups because of:

   a. the specialization of the job;

   b. an already existing workforce;

   That company shall demonstrate their commitment to equal opportunity by hiring a person or persons from the target groups somewhere else in their organization.

8. Every effort shall be made to hire youth, from the target groups for employment during the summer and/or after school.

Training

9. Companies shall endeavour to retrain and rehire those of its employees who have become disabled while fulfilling work for the company. Companies and contractors shall endeavour to retrain workers who have become redundant as a result of technological change.

10. Companies not already employing target group workers shall endeavour to recruit and train members of the target groups in an on-the-job apprenticeship training program.

11. Companies employing skilled workers in the traditionally male occupied positions of processing, machining, product fabricating, construction, and equipment operating, etc., shall notify the Federal INTO program and other similar programs of their willingness to employ female graduates and apprentices and notify the programs whenever a vacancy becomes available.

Mechanisms and Notice Requirements

12. Contractors shall notify and forward to all unions with whom they have a bargaining agreement, a copy of those Good Faith measures to which they have agreed.

13. All contractors shall expand employee records kept under the Fair Wage Policy (i.e. names and wages) to include equal opportunity data. This data shall include sex, ethnic origin and/or disability.

14. All contractors shall submit a list of occupational categories required to complete the contract.

15. Companies where there are concentrations of non-English speaking workers shall provide English as a Second Language (ESL) classes for upgrading purposes in the workplace. The company shall be responsible for providing a suitable space and time for such classes and consult with the local boards of education regarding the establishment of these classes.

16. Companies shall undertake to compile an inventory of all people with disabilities, minorities, and women seeking promotion opportunities and shall encourage members of the above groups to seek such opportunities

17. Companies shall examine seniority practices and job classifications to ensure that they do not have a discriminatory effect.

18. All companies shall be required to enforce the Ontario Human Rights Code provisions for the protection of all employees from harassment because of sex.

5-iv Model 3: The Point System as an Approach to Contract Compliance

Many of the foregoing good faith measures would be more feasible for large contractors or for those contractors with whom the City enters into long-term contracts. The holders of large and long term contracts would be able to implement and fulfill "Good Faith Measures" comprehensively, whereas, the holders of small and short term contracts would be limited in their ability to comply with these measures.

Therefore, in order to expand a contract compliance program to the varied City contractors, the introduction of a point system would be more equitable. This point system would credit contractors with existing and proposed equalizing measures as outlined in the list of good faith measures, while also taking into account the type and size of company, and the size of the contract with the City.

The following chapter outlines issues to be considered in expanding the contract compliance program based on a point system for implementing equal opportunity.

CHAPTER SIX: IMPLEMENTATION

6 Implementation - Factors to be Considered

The introduction of an expanded contract compliance program based on a point system and the weighting of "Good Faith Measures" would require the preparation of an implementation schedule which is beyond the scope of this report. (See Administrative/Implementation Framework).

However, in the preparation of implementation mechanisms, the following issues would have to be considered.

(i) Weighting of factors and assigning points;

(ii) Preparing technical manuals and disseminating information;

(iii) Monitoring the implementation of contract compliance;

(iv) Penalties for non-compliance.

6-i Weighting of Factors and Assigning Points

The previous chapter outlined three criteria to be considered in awarding City contracts based on a point system. This would require the development of a detailed rating sheet based on the size and type of company and contract, and a weighting of the existing and proposed good faith measures.

These three criteria could represent a minimum of 20% of the overall weight of all factors considered in awarding contracts.

If the sum of this rating represented twenty percent of the decision to award a contract, it would provide a sizeable incentive for companies to begin to increase the participation rates of the target groups in their labour force. Thus, if a company had the same price and quality for an item as another company, the company receiving the higher rating under the 20% equal opportunity category would be awarded the contract. A similar rule would apply to financial institutions where surplus funds are invested.

6-ii Technical manuals and Dissemination of Information

In addition to preparing the above mentioned rating sheets, a detailed manual would be required outlining the operation of the contract compliance program. This document would be attached to the existing document "How to sell to the Department of Purchasing and Supply of the City of Toronto and Municipality of Metropolitan Toronto", which is supplied to all prospective vendors and contractors. A technical manual designed especially for the small business would also be necessary. This manual would detail how companies could implement each measure and would provide information such as lists of community organizations and newspapers with whom they could advertise, information on the English in the Workplace Program, government training and apprenticeship programs, etc.

The City could also hold a series of seminars for companies which already hold City contracts and for those which wish to compete for City contracts. These seminars would focus upon systemic discrimination, existing legislation (federal and provincial), the goals of the City's Equal Opportunity Contract Compliance program, and methods of eliminating discriminatory employment practices. The seminars would emphasize the positive benefits of introducing fair employment practices and the economic necessity for changing existing practices. Both management and labour representatives could be invited.

6-iii Monitoring the Program

The City already has a monitoring program as part of the existing Contract Compliance program. The City's Fair Wage Officer and Assistant Fair Wage Officer each visit at least two companies holding City contracts everyday to ensure that the workers are being paid the fair wage agreed upon in the contract. As a condition of the City contract, these companies are required to make the records available to the Fair Wage Officer at the time of the visit. These records include lists of employees, records of wages and amounts paid to each worker. The company is also required to disclose relevant information regarding any worker as may be required by the Fair Wage Officer.

The Fair Wage Officers do not visit every company in receipt of City business. The Fair Wage Officer noted that "the word spreads through the industry that we are doing the rounds and the companies make sure that they are complying". Thus, the spot check system operates to promote self-discipline on the part of the contractors.

In order to monitor an extended compliance program which would include the features previously described, additional resources would be required. It might be necessary to expand the Fair Wage Office and to reclassify the staff as Fair Employment Officers.

It would be important for workers to be advised of any additions to the Fair Wage Policy. Therefore, it would be necessary to display the amended Workers' Rights in all places of recruitment so that persons who feel they have been discriminated against can report such incidents to the City. The City could investigate and where the City finds that the contractor has not complied with the terms of the contract, the appropriate penalties could be imposed.

6-iv Penalties for Non-Compliance

The present penalties for non-compliance with the Fair Wage Policy include:

(a) cancellation or termination of any contract or portion of any contract;

(b) withholding payments on a contract; and

(c) debarring the contractor until compliance is demonstrated.

It is worth noting that since the present Fair Wage Officer has been employed, no company who has had funds withheld or lost a contract for not paying the agreed upon fair wage has ever taken the City to court.

SUMMARY

An axiom of labour market theory is "the last hired is the first fired". In times of high unemployment it is evident that women, people with disabilities and minority group members face the most disadvantage. When the economy is tight, equal employment opportunity programs need to be expanded rather than decreased.

The social facts which require the above, are the same or similar to those which would insist upon the introduction of a contract compliance program. Within the vast array and range of remedies available to influence the labour market position of women, people with disabilities and minorities, contract compliance is a "better tasting pill" than mandatory affirmative action or quotas.

This study has identified the extent to which the City can have an impact upon labour market practices in both the private and public sectors. It has also outlined models and implementation issues for a contract compliance program.

ADMINISTRATIVE/IMPLEMENTATION FRAMEWORK - CITY OF TORONTO

The foregoing background study is confined to a policy orientation due to the limitations of available data. The four City Departments which are charged with responsibilities for the Corporation's accounts maintain their records according to previously established requirements. Therefore, in order to determine the most efficacious manner of translating an extended contract compliance policy into administrative machinery, it would be necessary to develop additional financial documentation mechanisms. Such a system is a prerequisite to the implementation of the policy described in this study.

In order to more clearly define the administrative framework for these policies, two acts are necessary.

(1) The establishment of an implementation task force which would undertake to define and to design an operational context. This task force would include representation from all interested parties, including several City departments.

(2) The provision of adequate resources to assist this task force in those areas requiring specialized and detailed investigation.

Implementation Task Force

The three basic groups of players active in the establishment and implementation of equal opportunity policies are (a) Members of Council, (b) the public via Task Forces and Mayor's Committees, and (c) City Departments. It is unclear what the role of Members of Council and the public might be in the work of an implementation Task Force. However, recent special committees have included broad representation, and it would appear that Members of Council on the Personnel Committee, the Budget Review Group and members of the Mayor's Committee on Community and Race Relations have an interest in this undertaking.

The civic departments which would be most involved with the introduction of an extended contract compliance policy include the following:

Department	Function(s)
(1) Audit	Records
(2) Finance	Records Investment Purchase of Service
(3) Housing	Purchase of Service
(4) Legal	Contract execution Contract prosecution
(5) Management Services	Budget Analysis Purchase of Service Equal Opportunity Division
(6) Public Works	Purchase of Service Purchase of Goods
(7) Purchasing & Supply	Bids and tenders Fair Wage Office Purchase of Goods

Resources

Professional advice, including more detailed research, and administrative support would be required to assist with the additional investigation required for the implementation of the proposed policy.

Areas Requiring Further Investigation

(1) Contract Research - Purchase of Goods

(a) type of goods purchased

(b) number of contractors

(c) size of contracts (dollar value)

(d) frequency of contracts

(e) number of employees/jobs required to fill contract, where applicable

(f) types of jobs created, where applicable.

(2) Contract Research - Purchase of Service

(a) type of service purchased

(b) number of suppliers

(c) size of contract (dollar value)

(d) frequency of contract

(e) number of employees/jobs required to provide service, where applicable

(f) types of jobs created, where applicable.

(3) Contractor/Supplier Data

(a) size of company, total number of employees

(b) size of company, value of assets and volume of annual business

(c) volume of City business

(d) frequency of City business

(e) number of employees hired on City contracts

(f) types of jobs required to provide service or goods for City contract

(g) workforce composition by equal opportunity target groups

(h) presence of equal opportunity policies and practices.

(4) Legal

(a) A variety of model contracts or clause options would be required to cover the "Good Faith Measures" identified under Model Two outlined in Chapter Five.

(b) A mechanism may be required for Local Boards, Commissions and municipal enterprises to adopt equal opportunity policies and practices.

(5) Other

More detailed consideration of the technical assistance that would have to be provided to suppliers and contractors to assist with the introduction of equal opportunity practices.

GENERAL

The preparation and amalgamation of the information identified as being required would assist in the design of the administrative apparatus for implementing and monitoring these policies. Once the administrative framework is developed, additional reports may be required for City Council and appropriate Committees.

FOOTNOTES

1. Swan. All data cited in this section on women derives from this study unless noted.
2. Canada. Employment and Immigration Commission, Report of Registered Clients and Vacancies, MAN 757, Toronto District. These reports are generated monthly and present a detailed occupational breakdown of clients registered in the Toronto District CEC offices. The Toronto District includes Brampton, Newmarket, Oakville and Mississauga.
3. Ramkhalawansingh, 1980, 71.
4. Clark and Zsigmond, 1981.
5. Ramkhalawansingh, 71; See also Clark and Zsigmond.
6. Ontario Women's Bureau, Women in the Workplace, 1982, 18.
7. City of Toronto, Outreach Recruitment Programme Report.
8. Sampson, 1.
9. Bates and Vernon, 1979.
10. Canada Employment and Immigration Commission, 1982, 74-75.
11. Jain, 1981, 45.
12. Social Planning Council, 1982.
13. Robertson, March 1980.
14. Social Planning Council, op cit.
15. Borovoy, 1977, 7.
16. Social Planning Council, op. cit, 38.
17. Canada Employment and Immigration Commission, 1982, 81.
18. Social Planning Council, op cit, 41.
19. ibid.

20. Jain, op cit, 3.

21. Social Planning Council, op cit, 41.

22. ibid, 42.

23. Jain, 1981. In this report Jain cites the Task Force on the racial and ethnic implications of police hiring, training, promotion and career development, (July 1980, 52).

24. Social Planning Council, op cit, 43.

25. Jain, 1980, 4.

26. ibid.

27. ibid, 7.

28. ibid, 8.

29. ibid, 6.

30. Canadian Union of Public Employees (CUPE). Equal Opportunity at Work: A CUPE Affirmative Action Manual. Ottawa, Ont: 1975, 2.

31. ibid.

32. Cited in Canada Employment and Immigration, 1982, 19.

33. Betcherman, 1982.

34. Denton et al, 1982.

35. Armstrong, 1982.

36. ibid.

37. Cohen, 1982.

38. Ramsay.

39. Comments made at an Equal Opportunity meeting at City Hall, Toronto, December 1981.

40. Cohen, 1979.

41. ibid, 40.

42. Robertson, op cit.

43. Toronto Star, May 12, 1982.

44. Ontario Human Rights Commission, 1982, 19-20.

45. Cohen, 1979, 64.

46. Bernstein et al, 6.

47. Friedman, 15.

48. Trebilcock et al, 87.

49. Cairns, 82.

50. Kinsella, 4.

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APPENDIX I

CANADIAN CONTENT

The City and Metropolitan Toronto may take into consideration the percentage of "Canadian Content" in goods offered when evaluating quotations.

The following definition of "Canadian Content" has been adopted by the City and Metropolitan Toronto.

> "CANADIAN CONTENT IS DEFINED AS THE DIFFERENCE BETWEEN THE LAID DOWN COST AND THE DUTIABLE VALUE OF IMPORTED GOODS OR IMPORTED PARTS. ALL VALUES ADDED IN CANADA, INCLUDING LABOUR, MATERIAL, TRANSPORTATION, DUTY AND TAXES AND THE CANADIAN SUPPLIER'S PROFIT FALL INTO CANADIAN CONTENT."

The "Canadian Content" of goods requested in this quotation must be calculated using the above definition and stated on the quotation sheet in the space provided.

City of Toronto
WORKERS' RIGHTS

Contractors must pay or cause to be paid weekly or biweekly to every worker employed in the execution of this Contract (and shall see that every owner of a truck or other vehicle employed by them or by any subcontractor under them in the execution of this Contract shall pay, or cause to be paid weekly or biweekly to each of their drivers) wages at the following rate, namely:

1. For workers employed in shopwork, other than shopwork under any contract pertaining to shirts, uniforms, hats and overcoats, the rate of wages shall be the Union rate of wages in the particular district or locality in which the work is undertaken, for any class of work in respect of which there is such Union rate, and for any class of work for which there is no such Union rate, the rate of wages shall be the rate of wages prevailing in the

particular district or locality in which the work is undertaken.

1a. For workers employed in shopwork under contracts pertaining to shirts, uniforms hats or overcoats, the rate of wages shall be the Union rate of wages prevailing in the Municipality of Metropolitan Toronto. It is an express condition precedent to an award being made to any tenderer for contracts pertaining to shirts, uniforms, hats and overcoats, that the rate referred to in the preceding sentence shall be in effect in the factory, shop or place of manufacture of the tenderer at the time of tendering, and shall continue in effect during the lifetime of any contract awarded. Contractors must, in addition to the obligations imposed upon them by this section respecting disclosure of information to the Fair Wage Officer, supply such information as may be necessary, in the opinion of the Fair Wage Officer, to ensure compliance with the condition aforesaid.

2. For workers employed in field Work, the rate of wages for each class of work shall be at least that set out in the schedule of wage rates filed by the Fair Wage Officer in the Office of the City Clerk after being first approved by the Executive Committee of the Corporation.

For the purpose of this section "wages" or "rate of wages" shall include any applicable amount for fringe benefits shown in the current Fair Wage Schedule and such amount at least for fringe benefits must be paid to the worker as part of the worker's wages or be paid for the worker's benefit as provided in any collective agreement within the meaning of The Labour Relations Act applicable to such workers.

Contractors shall keep at all times a list of the names of all workers employed in the work and a record of the rate of wages and of all the amounts paid to each, and shall from time to time, if demanded by the Fair Wage Officer, furnish a certified copy of all paysheets, lists, records and books relating to the said work, and the originals thereof shall be open at all times for examination by the Fair Wage Officer; and Contractors shall also at all times furnish and disclose to the Fair Wage Officer any other information respecting wages of workers that may be desired by the Fair Wage Officer with the said work.

In case of dispute as to the rate of wages to be paid under this contract or as to the amount to be paid to any worker, the decision of the Fair Wage Officer shall be final and binding upon all parties.

Contractors shall not compel or permit the workers or drivers, the employees of a truck owner whom they employ, to work more than the

number of hours per day and the number of hours per week set out for the particular type of work involved in the Fair Wage Schedule, except in case of emergency, and then only with the written permission of the Commissioner or head of the Department having charge of the work or the person then acting as such.

For the purpose of this section "workers" shall include a mechanic, worker, labourer, owner and driver of a truck or other vehicle employed in the execution of this Contract by Contractors or by any subcontractors under them and "shopwork" shall mean any work in performance of the Contract that is done in or at any factory, foundry, shop or place of manufacture not located at or upon the site of the work, and not operated solely for the purpose of the work, and "field work" shall mean all work in performance of the Contract that is not shopwork.

Where a Contract is for the construction, reconstruction or repair of a sidewalk or sidewalks, with or without curbs, but not including construction, reconstruction or repair of any other work, Contractors shall employ such number of cement finishers as will result in at least three out of every ten workers (other than foremen/women, machine operators and truck drivers) employed in the said construction, reconstruction or repair of such sidewalk or sidewalks being cement finishers. Where the application of the before-mentioned formula for determing the minimum number of cement finishers to be employed does not result in whole numbers only, the part of such number which is a fraction shall, if the same is less than one-half be disregarded and if the same is greater than one-half be regarded as one, and if the same is one-half shall in the discretion of the Fair Wage Officer either be disregarded or shall be regarded as one. All cement finishers referred to in this section shall be paid at the hourly rate of wages set out in the Fair Wage Schedule as amended from time to time under the designation "Cement Finishers (sidewalks, curbs)". The City being bound by the Provincial Collection Agreement between The Carpenters--Employer Bargaining Agency (E.B.A.) and the Ontario Provincial Council, Union Brotherhood of Carpenters and Joiners of America (O.B.C.) any work that is the work of the Union (The Carpenters' District Council of Toronto and Vicinity) under the provisions of Article 19 of the Agreement shall only be performed by an employer bound by such agreement.

It is understood without limiting any other provision of the contract herein that this section shall apply to sub-contracts.

In case Contractors fail to pay any worker (or in case any owner of a truck or other vehicle fails to pay any driver) wages at the rate hereinbefore provided, the Corporation may pay the balance necessary to make up the amount that should have been paid and may charge such balance to the Contractor.

In the case of a contract for the purchase of supplies or materials to which the foregoing provisions respecting the rates of wages to be paid to workers engaged in shop work and field work do not apply, the Executive Committee of the Corporation will before awarding same cause to be secured from the Fair Wage Officer a report as to whether or not the tenderer maintains a fair wage level.

CONTRACTORS SHALL ATTACH TO ALL ACCOUNTS RENDERED FOR PAYMENT OF MONEY UPON THEIR CONTRACT A STATUTORY DECLARATION AFFIRMING THAT THE REQUIREMENTS OF THESE CLAUSES HAVE BEEN FULLY COMPLIED WITH.

Contractors must display legible copies of these "Workers' Rights" in prominent positions in their workshops, accessible to all employees.

Revised September 9, 1982

APPENDIX II

CITY OF TORONTO RECOMMENDATIONS TO THE GOVERNMENT OF CANADA ON CONTRACT COMPLIANCE AND EMPLOYMENT PROGRAMS.

These following recommendations are excerpted from the City of Toronto's response to OBSTACLES: PROGRESS REPORT, which was written by the Special Committee on the Disabled and the Handicapped (Government of Canada). The full text of the City's response is found in Executive Committee Report No. 1, Local Board of Health Report No. 12 - Clause No. 6. December 16, 1982.

RECOMMENDATION 25:

That every employer under federal jurisdiction (as defined under the Canada Labour Code) having 100 or more employees be required to undertake an Affirmative Action Program to facilitate the hiring and promotion of qualified disabled persons.

GOVERNMENT OF CANADA COMMITMENT:

Not Implemented

CITY OF TORONTO RESPONSE:

The City of Toronto is disappointed that no action has been taken.

RECOMMENDATION 26:

That the Federal Government establish a policy of contract compliance which will require that government contracts.

. With firms employing 200 persons or more; and

. Where the value of the contract is $20,000 (indexed to Consumer Price Index) or more,

must contain a clause in which the contractor agrees to adopt and implement an Affirmative Action Program for disabled persons.

GOVERNMENT OF CANADA COMMITMENT:

Not Implemented

CITY OF TORONTO RESPONSE:

The City of Toronto agrees with the Special Committee and is disappointed that no action has been taken.

RECOMMENDATION 28:

That the Governor in Council pass regulations under Section 19 of the Canadian Human Rights Act, to require non-discrimination terms to be included in all Federal contracts, licences, and grants.

GOVERNMENT OF CANADA COMMITMENT:

Not Implemented

CITY OF TORONTO RESPONSE:

The City of Toronto agrees with the Special Committee and regrets that this recommendation has not been implemented and reaffirms its support for contract compliance and related recommendations.

RECOMMENDATION 30:

That the Federal Government give priority in its purchasing policy in order to ensure that a significant amount of goods and services required by Federal Departments, Agencies and Crown Corporations will be provided by firms and organizations established specially to provide employment opportunities to disabled persons. This policy should include such measures as:

- Ways and means to expand the industrial capacity and competitiveness of these special suppliers, such as long-term contracts and low-interest loans.

- "Set Aside" products and services which are exclusive purchasing contracts that will provide an element of security and continuity to this type of organization.

GOVERNMENT OF CANADA COMMITMENT:

Not Implemented

CITY OF TORONTO RESPONSE:

We agree with the Special Committee.

RECOMMENDATION 36:

That employers and labour unions in the private sector be encouraged to ensure that disabled workers are provided employment opportunities, income and job security, by including measures in personnel policies or collective agreements to this end, such as:

- Special re-training plans,

- Transitional arrangements, including training or retraining, to facilitate return to the workplace;

- Preferential arrangements or guarantees to ensure return to a former job or suitable alternative.

GOVERNMENT OF CANADA COMMITMENT:

No Jurisdiction

CITY OF TORONTO RESPONSE:

Although the Federal Government has no direct jurisdiction it can and should influence private sector employers to make changes in their personnel practices.

RECOMMENDATION 38:

That legislation replacing the Post Office Act include provisions requiring the Post Office to implement an Affirmative Action Employment Program, and to adopt a policy of purchasing a significant amount of goods and services from firms and organizations established specifically to provide employment for disabled persons.

GOVERNMENT OF CANADA COMMITMENT:

Not Implemented

CITY OF TORONTO RESPONSE:

The City of Toronto agrees with the Special Committee that compulsory affirmative action programs in Crown Corporations are necessary and, like them, are not convinced that voluntary compliance will occur.

APPENDIX III

FEDERAL AND PROVINCIAL HUMAN RIGHTS LEGISLATION

Federal-Human Rights

The Canadian Human Rights Act states in section (a):

> "Every individual should have equal opportunity to make for himself or herself the life that he or she is able and wishes to have consistent with his or her duties and obligations as a member of society without being hindered in or prevented from doing so by discriminatory practices."

The Act sets out the prohibited grounds of discrimination in employment in and the provision of services, goods and facilities. The Act prohibits discrimination on nine grounds:

1. Race
2. National or Ethnic Origin
3. Colour
4. Religion
5. Age
6. Sex
7. Marital Status
8. Conviction for an offence for which a pardon was issued.
9. Physical handicap in matters related to employment.

Jurisdiction

The Act applies to all federal government departments, agencies and Crown Corporations and to businesses and industries under federal jurisdiction. In areas not under federal jurisdiction, protection is given by the provincial human rights laws.

Provincial-Human Rights

The Ontario Human Rights Code, 1981 provides protection against discrimination in employment. The areas covered by the Ontario Code are the same as those included in Federal legislation. The revised Ontario Human Rights Code is set out below:

Part 1

4(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status or handicap.

4(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

Discrimination on the basis of a prohibited ground may be permitted where the ground constitutes a bona fide occupational requirement or qualification.

Discrimination on otherwise prohibited grounds pursuant to a valid affirmative action program is permitted. Section 13(1) states:

> A right under Part 1 is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part 1.

In addition, the Commission is authorized to recommend the introduction and implementation of special (affirmative action) programs, to encourage the employment of members of a group suffering from historical or chronic disadvantage.

Canadian Charter of Rights

In addition to the Federal and Provincial human rights legislation, the Canadian Charter of Rights was recently proclaimed. The limits of the Charter will not be discussed here, however, the charter makes the following guarantees.

Fundamental Freedoms

Democratic Rights

Mobility Rights

Legal Rights

Equality Rights

Official Language Rights

Minority Language Rights

Section 15

Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical ability.

(2) Subsection (1) does not preclude any law, program, or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

The latter provision allows for affirmative action programs designed to improve the conditions of disadvantaged groups and makes such affirmative action programs non-discriminatory. It is also worth noting that nothing in the Charter prevents Parliament or any legislature from increasing the degree of protection of rights and freedoms that Canadians already enjoy.